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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/723,776

11/26/2003

Daniel J. VanEpps JR.

9314-59

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10/30/2006

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EXAMINER

HANNON, CHRISTIAN A

ART UNIT

PAPER NUMBER

2618

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/723,776

Applicant(s)

VANEPPS ET AL.

Examiner

Christian A. Hannon

Art Unit

2618

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: 6 & 22.  
Claim(s) rejected: 1, 4, 5, 7-17, 20, 21, 23-25, 28-32 and 35-38.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

*Quochien B. Vuong* 10/17/06

**QUOCHIEN B. VUONG  
PRIMARY EXAMINER**

*[Signature]*

Continuation of 11. does NOT place the application in condition for allowance because:

In response to Applicant's argument regarding claims 1, 17, 25 & 32, the Applicant states that "Marx does not appear to include any disclosure related to receiving a noise signal generating a sound metric for the noise signal by performing a Fourier transform on the noise signal, and generating an alert signal that has a spectral composition based on the sound metric." The Examiner would like to refer the Applicant to the third page of Marx, paragraph thirty two at the 20th through 27th lines Marx discloses receiving a noise signal. Marx teaches that the noise signal can be provided by measured or received signals. The Examiner has interpreted this to be an ambient noise measure which is transformed via a Fourier transform (the Examiner maintains that the conversion between the time and frequency domains utilizing the Fourier transform is inherent as set forth in the Final Action) and is used by the control block 15 of Marx to generate an alert (Page 3, Paragraph [0032], Lines 20-27; 31-35; Marx) which has a spectral composition based on the sound metric, in fact the alarm or alert of Marx's spectral composition is generated by the ambient sound measure and therefore is 'based' on said sound metric. Claims 17, 25 & 32 are similarly rejected as they are of analogous claimed subject matter to claim 1. Furthermore claims 4-10, 20-24, 28, 29, 35 & 36 are not patentable for at least the forgoing reasons, as they are dependent upon the unpatentable claims.

Regarding claims 11, 30 & 37 the Applicant argues that Marx when combined with Corkum fails to teach the limitations of the aforementioned claims. As shown in the preceding paragraph, the Applicant's argument of Marx's deficiencies is overturned. Furthermore the Applicant argues that Corkum fails to teach that generating an alert signal that has a spectral composition based on a sound metric for a noise signal. The Examiner respectfully points out that Corkum was relied upon merely for a teaching of a plurality of alert profiles. As shown in the preceding paragraph Marx, which was used appropriately; when combined with Corkum teaches the limitation so claims 11, 30 & 37 all of which contain analogous subject matter.

Regarding claim 14 the Applicant argues that a plurality of alert profiles is generated before the noise signal is received. The Examiner would like to direct the Applicant to Marx's teaching that the types of signals to be reproduced comprise music signals, ringing tones and alarms. These are separate from one another and all inherently would have different spectral composition i.e. a user's ring tone would not be an alarm signal, they inherently have different wave forms, or spectral compositions. That said these exist before in Marx prior to assessing or measuring an ambient noise level (Page 3, [0032], Lines 20-27; Marx). The Applicant further argues that Corkum does not appear to suggest pre-storing alert profiles that can be selected upon receiving a noise signal. However the examiner has relied on the Corkum reference to teach a plurality of alert profiles which the Examiner contends it does as previously cited (Column 6, Lines 48-55; Corkum).

Claim 9 remains rejected in view of the foregoing arguments. Claims 6 & 22 remain as objectionable subject matter as set forth in the Final Action.